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May 15, 1996

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Ex Parte

MAY 16 1996

Mr. William F. Caton
Acting Secretary

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Federal Communications Commission DOCKET FILE COPY ORIGINAL
1919 M Street, NW - Room 222
Washington, DC 20554

Re: Implementation of Section 302 of the Telecommunications Act of 1996;
CS Dkt. No. 96-46

Dear Mr. Caton:

This notice of a written *ex parte* presentation in the above-referenced proceeding is provided for inclusion in the public record in accordance with the Commission's *ex parte* rules.

Pursuant to a request from Mary McManus, the attached letter was provided to her.

Please direct any questions relating to these matters to the undersigned.

With best wishes,

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}

John W. Pestle

JWP/nk

cc: Mary McManus

Mr. Caton's note
5/16/96
O&I

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}

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May 15, 1996

Ms. Mary McManus
Legal Advisor
Federal Communications Commission
1919 M Street, NW
Room 832
Washington, DC 20554

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MAY 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Ms. McManus:

Thank you for taking the time to meet with the representatives of the Michigan, Indiana and Texas (MIT) Communities last Friday, May 10 on the Open Video Systems (OVS) Rulemaking.

In our meeting you requested a copy of a cable television franchise. Attached in this regard is a recent franchise entered into between the City of Niles and Westmark (a subsidiary of TCI).

I have also attached an additional copy of our letter of May 14 which points out serious issues (and makes recommendations for Commission action) to prevent "redlining" by OVS providers. This could be a major problem particularly if (as is likely in many cases) the OVS provider becomes the only land-line video provider for a municipality.

If you have any questions, please let me know.

With best wishes,

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}



John W. Pestle

JWP/nk

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}

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May 14, 1996

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MAY 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Ms. Meredith Jones
Chief
Cable Services Bureau
Federal Communications Commission
2033 M Street, NW
Room 918
Washington, DC 20554

Re: OVS Rulemaking -- Area Served

Dear Meredith:

Thank you for taking the time to meet with representatives of the Michigan, Indiana and Texas (MIT) Communities last Friday. Your doing so is greatly appreciated.

You asked the communities to respond on the issue of whether an OVS provider has a "universal service" requirement. In summary, we believe that OVS providers are subject to federal and local restrictions on where they serve. This is necessary to prevent discrimination, redlining and "economic redlining" which would result in minority, low income and growing areas of our nation's municipalities from being served by any cable or OVS provider.

We are particularly concerned about this in the situation where the OVS provider is the only land line video provider, which is likely to occur in a substantial percentage of the nation's communities. This could occur, in particular, if cable operators are allowed to switch to becoming OVS providers (and is an additional reason why this should not happen).

Ms. Meredith Jones
May 14, 1996
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Further detail explaining the preceding points is as follows.

OVS Overbuilding Not Only Scenario: Much of the discussion to date on OVS has implicitly focused on the "overbuild" situation, that is, where an OVS provider would be serving an area already served by an incumbent cable operator. Although overbuilding may occur in some instances (and it has been rare in the U.S. to date) serious concerns from allowing an OVS operator discretion on where and whom to serve arise in the more likely situation of the OVS provider being the only (i.e. - monopoly) land-line video provider. This is discussed next.

OVS the Only Provider: The likely situation in many instances is that the only land line video provider will be an OVS provider. This could occur a number of ways:

- (1) -- The incumbent cable operator switches to becoming an OVS provider. This is particularly likely to occur if the cable provider provides local telephone service. As you know, having cable companies provide phone service was stressed by Vice President Gore in his recent speech to the NCTA convention; was encouraged by the 1996 Telecommunications Act; and now is starting to occur. For example, attached are the first few pages of Continental Cablevision's May 9 application to provide telephone service in those areas of Michigan where it has cable systems. This includes the state capital -- Lansing -- as well as numerous other cities.

It is highly likely that other cable operators in Michigan and other states will follow Continental's example such that they will be local exchange carriers and thus claim that they can switch to being OVS providers.

- (2) -- In many areas, the phone company can buy out the cable company as is now expressly allowed under new Section 652 of the Communications Act (added by the 1996 Act). Section 652 in general allows such buyouts in more rural areas, for all but the largest cable operator in the top 25 television markets, and for certain cable systems outside the top 100 television markets.
- (3) -- In the medium to longer run, the laws of economics (in particular those relating to natural monopolies) may result in there being "one wire" to many subscribers homes which provides both telephone, video and data. This could be the result of either the cable operators displacing the phone companies or vice versa. In either case, the resulting entity will be a local exchange carrier and claim that it can be an OVS provider.

Thus, either by cable operators providing telephone service today or other mechanisms the nation is likely to face large numbers of areas where the OVS operator is the only wired video provider, as opposed to the OVS provider being an overbuilder.

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Redlining/Discrimination: A monopoly OVS provider with no restraints on where and who it serves is likely to discriminate against large segments of the nation's population in the provision of service. These groups -- predominately minorities, low income groups or growth areas on the edge of municipalities -- will either have no video service or distinctly inferior service (as current 1960's or 70's cable systems are not upgraded, while more affluent areas are upgraded to a fiber standard). The reason for the discrimination would be the desire of the OVS operator to focus on more affluent -- and thus more profitable -- areas.

Examples of this could be the following:

- As you are aware in Washington, the cable company has had significant difficulties providing cable service in the Anacostia area. If it is an OVS provider and there are no constraints on where and whom it serves, Anacostia is likely to be left with distinctly inferior cable service, if any at all.
- In Detroit, Dallas, New York, Los Angeles and other major urban centers, the low income inner city areas are likely to not be served by OVS, or again receive inferior service. For example, Detroit has 62% of its population below the poverty line and has only 31% penetration on cable, less than half the national average. The figures and risks for Dallas are comparable. A current example of such redlining comes from San Francisco, where we are informed that the current operator (Viacom/TCI) does not serve certain minority/low income areas of the city (who thus have no cable service) because it claims that it is not required to do so because (according to the operator) language requiring this was not contained in its franchise to serve the city.

These illustrations show how the lack of any requirement on where and who to serve could lead to major discrimination in the provision of OVS services. The resulting harm is particularly great where OVS is the only wired provider.

To prevent these types of problems cable franchises typically contain a density requirement, which if met, requires the cable operator to serve all residents of the area in question. For example, a franchise might require service without any line extension charge by the cable operator wherever there are X dwelling units per mile of street (pro-rated up or down for areas of more or less than one mile).

Municipalities with denser populations typically require in their cable franchises that service be available to all residents, with service to any low density areas being more than compensated for by high density areas.

Finally municipalities have "anti-redlining" provisions in their franchises, for example as directed by Section 621(a)(3) of the 1984 Cable Act. Often such provisions predate or are more expansive in the list of invidious criteria than Section 621(a)(3).

Ms. Meredith Jones
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The problem is equally acute in growth areas and lower density areas towards the edge of urban areas where cable operators (for example) often contend that the housing density is too low for them to provide service. A good example of what could occur comes from Las Vegas, NV where the cable operator refuses to serve much of the growing suburban areas because it claims its franchise lacks any "dwelling units per mile" requirement.

This type of problem is fairly widespread towards the edges of metropolitan areas and in more rural areas where the single biggest cable issue is not cable rates or cable channels, but the inability of subscribers to obtain cable service. Again, municipalities address this problem through density (dwelling units per mile) requirements described above.

In conclusion, there is thus a major risk that without requirements on OVS providers of where and whom they serve, that minority, inner city and growth areas of the nation's municipalities may be left without any kind of wired video service. The numbers in question could be large, e.g. 20-40% of the nation's population.

Control Right-of-Way/Compensation: One element of the compensation which a municipality receives for the use of its right-of-ways is adequate assurance that its citizens will be served and will not be discriminated against. The exact language will vary from community to community, such as the dwelling units per mile or "serve all residents" examples described above. Such provisions affirmatively prevent discrimination based on race, income level, public assistance status or housing density.

The key is that rights-of-way are owned by the public. The public, through the municipality, is constitutionally entitled to just compensation for use of the rights-of-way. Such compensation takes a variety of forms, including not only monetary compensation but requirements such as those set forth above to ensure that public rights-of-way are used to serve the public generally and to prevent their use in a discriminatory fashion. Such provisions ensure that as many residents as reasonably possible are provided service.

Note that the preceding provisions extend not just to who is provided service but are often applied to such factors as the timing of the building (or rebuilding) of a system so that an operator cannot obtain indirectly (by a 15 year build of a 10 mile system) what it could not do directly.

Municipalities thus have the authority, as a part of the just compensation they receive and to prevent discriminatory use of public property, to take analogous actions in the OVS area.

FCC Authority and Rules Needed: For the reasons set forth above, the matter of where and whom OVS operators serve is an issue this Commission must address. Casting the issue as a "universal service" issue is probably not correct because, as the Commission is aware, cable operators currently do not serve all (or nearly all) residents of the United States (in contrast to phone companies, which effectively do provide service to most U.S. residents), and OVS is likely to be more like cable than telephone. It would be very unfortunate if this Commission were to adopt rules which would have the effect, as early as the summer or fall of this year, of allowing

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ATTORNEYS AT LAW

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cable companies to start discriminating against minorities, low income groups or lower density geographic areas as described above.

We thus believe the Commission should, at minimum, do the following in its OVS rules: First, it should set forth a minimum density requirement for service of no more than 10 dwelling units (occupied or unoccupied) per mile of street. All areas meeting this requirement (pro-rated up or down for areas more or less than one mile) would have to be wired for OVS service within two years. An OVS provider could deviate from this requirement only if it has obtained the advance concurrence of the municipality being served, and if such deviation is approved by the Commission in the certification process. Adopting a single standard would provide the OVS providers with a simple, clear test of general applicability, yet would require them to consult with local municipalities -- who without question are most knowledgeable as to local conditions -- in situations where deviations from this standard are warranted.

As an example, municipalities have seen variations in density and service area requirements based upon such peculiarly local factors as terrain (mountains, rivers, lakes), man made obstacles (mining areas, Federal installations), and unique variations in demographics, housing and other residential occupancy patterns.

Second, the Commission should enunciate strong rules against discrimination on invidious grounds analogous to (but more extensive than) those set forth in Section 621(A)(3) of the Cable Act and make clear that any violation of such provisions would automatically result in OVS certification being terminated and the operator becoming a cable operator. An example of such language is attached.

Third, the Commission should take strong action to prevent cable operators from "redlining" cities with large minority populations. For example, it should prevent an OVS operator from electing to serve only the Maryland suburbs but not serving Washington D.C. at all. Actions such as this are essential to see that the nation's major urban centers with substantial minority populations, such as Detroit, Newark and many others are not denied service on racial, invidious or other self-serving grounds, while nearby communities are served. Thus the Commission should require an OVS operator providing service in an area near a municipality with a significant minority or low income population to start providing service to the latter municipality within two years of its starting to provide service to the nearby community (and to provide service to all areas of the minority/low income community within four years of starting to provide service in the nearby community). Only an absolute requirement such as this will prevent OVS operators from redlining many of this nation's cities. If OVS operators wish to have the benefits of relaxed regulation they must accept the burden of strong measures against discrimination.

Municipalities would still be able to act in the certification process or pursuant to the right to obtain just compensation if the result of the preceding were inappropriate for the municipality in question.

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}
ATTORNEYS AT LAW

Ms. Meredith Jones
May 14, 1996
Page 6

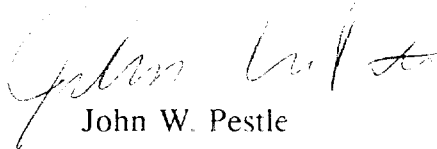
OVS Unavailable to Cable: The reasons set forth above further illustrate why cable operators should not be able to "switch" to being an OVS operator. This would lead to claims on their part that the dwelling units per mile, anti-redlining or other requirements in their franchises no longer apply, with the risks of no cable service or discrimination in service described above.

Conclusion: Again, we appreciate your meeting with us. We believe this issue which you raised is one with serious implications and hope the preceding analysis and recommendation is helpful.

With best wishes,

Very truly yours,

VARNUM, RIDDERING, SCHMIDT & HOWLETT^{LLP}



John W. Pestle

JWP/nk

cc: Mr. Rick Chessen, Cable Services Bureau
Mr. Gary Laden, Cable Services Bureau

EXHIBIT A

Operator shall not fail to provide service, deny service, deny access to service or otherwise discriminate in the area served, availability, quality, content, rates, terms or conditions of service provided to actual or potential subscribers on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, location, marital status or status with regard to public assistance. Operator shall comply at all times with all applicable federal, state and local laws and regulations relating to nondiscrimination.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **Continental**)
Telecommunications of Michigan Inc. for a)
license to provide basic local exchange service)
in certain cities and townships in the Detroit)
and Lansing LATAs)
_____)

Case No. U-11090



APPLICATION OF CONTINENTAL
TELECOMMUNICATIONS OF MICHIGAN, INC.

and

PREPARED TESTIMONY AND EXHIBITS

By Its Attorneys
CLARK HILL P.L.C.
Roderick S. Coy (P12290)
Joseph R. Assenzo (P41405)
200 N. Capitol Ave., Ste 600
Lansing, MI 48933
517/484-4481

Dated: May 9, 1996

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **Continental**)
Telecommunications of Michigan Inc. for a)
license to provide basic local exchange service)
in certain cities and townships in the Detroit)
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_____)

Case No. U-11090

APPLICATION

Introduction

Continental Telecommunications of Michigan, Inc. ("Applicant"), a Michigan corporation, hereby applies to the Michigan Public Service Commission, pursuant to §301(1), §301(2), and §302(1) of the Michigan Telecommunications Act, 1991 PA 179 et seq., as amended ("MTA"), for license to provide basic local exchange service in 44 communities in the Detroit and Lansing LATAs, as more specifically identified below.

Applicant is a wholly-owned subsidiary of Continental Telecommunications Corp., a Delaware corporation, which in turn is a wholly owned subsidiary of Continental Cablevision, Inc. ("CCI"), a Delaware corporation. Applicant's principal offices are located in Southfield, Michigan. On February 27, 1996 CCI announced an agreement to merge with U.S. West Media Group, a wholly-owned division of U.S. West, Inc. and a sister corporation to U.S. West Communications Group, a Regional Bell Operating Company. The agreement is pending regulatory approvals with a target closing date before year-end 1996. This application is not conditioned upon the closing of the merger transaction. Once completed, however, the merger will contribute to Applicant's financial and technical ability to provide service.

CCI is one of the largest and most experienced providers of video and other communications services in the world. CCI is currently rebuilding and upgrading its Michigan and

other U.S. systems to create advanced hybrid fiber optic and coaxial cable networks that will serve as an infrastructure to carry enhanced video, high-speed data and telephony services.

Applicant proposes to offer basic local exchange services consisting of two-way local lines/trunks for residential and business service. Applicant also proposes to provide local calling (usage) for these access lines, including message rate service for business customers and the required calling options for residential customers. It will offer, directly or by reselling such services obtained from existing providers, operator assistance services, lifeline, hearing impaired services, directory assistance and directories, free 900 prefix call blocking and switched access services. Applicant will also offer unregulated custom calling features on an optional basis to customers of regulated services. It will also offer intraLATA and interLATA toll services on a 1+ and 0+ basis. Applicant's services are described in the illustrative tariff attached in support of this Application. (Exhibit 1).

Under Section 203 the Commission is not required to hold a hearing on this application. If a hearing is ordered, however, the Commission has 180 days to issue its final decision in this matter. If the Commission is inclined to order a hearing on this application, then Applicant requests the Commission exercise its authority to grant Applicant a temporary license pursuant to Section 301(2) of the MTA, without notice and hearing pending its final determination on the application. Granting Applicant a temporary license to conduct limited technical and market trials will bring the benefits of competition to residential customers more quickly. It will allow Applicant to provide some service while its request for a permanent license is pending and it will allow a more rapid deployment of services once the permanent license is granted. Applicant will limit the scope of services provided under a temporary license to serving no more than 1,500 customers without further approval from the Commission.

License Requirements

Section 302(1) of the MTA identifies two requirements which must be met for the approval of an application to provide basic local exchange services under a permanent license: (a) the applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographic area of the license, and (b) the granting of a license to the applicant would not be contrary to the public interest. This application and the materials submitted in support of it demonstrate that the statutory requirements are met and Applicant should be granted a license to provide basic local exchange services in the proposed service territory.¹

I. DESCRIPTION OR IDENTIFICATION OF GEOGRAPHIC AREA FOR WHICH THE LICENSE IS SOUGHT

Applicant's proposed service territory is defined by municipal or township boundaries rather than by the incumbent local exchange company's exchange boundaries. Applicant proposes to offer basic local exchange service within the following 44 communities: Ann Arbor (City and Twp), Barton Hills, Belleville, Blackman Twp, Brighton (City and Twp), Canton Twp, Dearborn Heights, Delhi Twp, Eaton Rapids (City and Twp), Genoa Twp, Green Oak Twp, Hamtramack, Hazel Park, Howell, Jackson, Keego Harbor, Lansing (City and Twp), Lathrup Village, Madison Heights, Northville (City and Twp), Oak Park, Oceola Twp, Orchard Lake, Pittsfield Twp, Plymouth (City and Twp), Romulus, Roseville, Royal Oak Twp, Scio Twp, Southfield, Superior

¹ The Uniform Filing Requirements (UFR), adopted by Opinion and Order dated February 23, 1993 in Case No. U-10129, pre-date the 1995 amendments to the MTA and would appear to be superseded by them. Nonetheless, this Application follows the structure of the UFR and demonstrates compliance with them.

Twp, Sylvan Lake, Van Buren Twp, Webster Twp, West Bloomfield Twp, Westland, and Ypsilanti (City and Twp).

Applicant intends to provide facilities-based services in all areas of the communities listed above and to utilize facilities leased or obtained from Applicant's cable affiliate, which has a cable franchise for each of these communities. Although Applicant's service territory is defined by municipal and township boundaries, the local calling area for Applicant's customers will be the same as the incumbent carrier's existing exchange boundaries.² This means that Applicant's customers will have the same local calling area as if they remained customers of the incumbent provider.

II. DESCRIPTION OF THE APPLICANT'S GENERAL FINANCIAL, TECHNICAL AND MANAGERIAL RESOURCES AND ABILITIES TO PROVIDE BASIC LOCAL EXCHANGE SERVICE TO EVERY PERSON WITHIN THE GEOGRAPHIC AREA OF THE LICENSE.

Technical, Financial, and Managerial Qualifications

Background

Applicant is financially qualified to offer basic local exchange services in its proposed service territories. As a subsidiary of CCI, Applicant has the financial support necessary to procure, install and operate facilities and to hire and train the personnel necessary to operate those facilities. As an indication of this support, Applicant's management has already approved initial 1996 expenditures of \$10 million for development of its telephone operations. Applicant's

² The 44 communities in Applicant's proposed service territory fall into the following 29 zone and exchange areas as currently defined in Ameritech's tariffs: Ann Arbor, Belleville, Birmingham, Brighton, Commerce, Detroit, Dexter, Dimondale, Eaton Rapids, Fenton, Holt, Howell, Jackson, Lansing, Livonia, Mason, Northville, Plymouth, Pontiac, Pottersville, Romulus, Roseville, Royal Oak, Southfield, Walled Lake, Wayne, West Bloomfield, and Ypsilanti.

CITY OF NILES, MICHIGAN
1995 FRANCHISE
WITH
WESTMARC DEVELOPMENT JOINT VENTURE

N8263.024

December 29, 1994 -- Final

ORDINANCE NO. ____
CABLE TELEVISION FRANCHISE ORDINANCE

THE CITY OF NILES ORDAINS:

1 DEFINITIONS

1.1 Additional Insureds shall have the same meaning as "Indemnitees" in Part 6.

1.2 Authorized Area shall mean the entire area from time to time within the corporate limits of the City of Niles excluding, however, all areas that are within such limits solely due to agreements executed under the authority of Michigan Act 425 of 1984, unless the agreement expressly so provides.

1.3 Cable Services shall mean only

1.3.1 The one-way transmission to all subscribers of (i) video programming or (ii) other programming services, such as digital audio, and

1.3.2 Subscriber interaction, if any, which is required for the selection of such video programming or other programming service, where "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

1.4 Cable Television Business shall mean the provision by the Company of Cable Services solely by means of the Cable Television System.

1.5 Cable Television System or System shall mean a facility consisting of a set of closed transmission paths and associated signal generation reception and control equipment that is designed and used solely to provide Cable Services to subscribers within the Authorized Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves only subscribers in 1 or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public right of way (iii) a facility of a common or private carrier which is subject in whole or in part to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers.

1.6 City shall mean the City of Niles.

1.7 Company shall mean Westmarc Development Joint Venture L.P., a Colorado limited partnership, currently doing business as TCI Cablevision of Greater Michigan Inc.

1.8 Event of Default shall have the meaning defined in Part 11.

1.9 FCC shall mean Federal Communications Commission.

1.9.1 Franchise shall mean this ordinance and Franchise Fee shall mean the fee set forth in Part 8.

1.10 Gross Revenues shall mean all amounts earned or accrued by Company, or any entity in any way affiliated with Company, in whatever form and from all sources which are in connection with or attributable to the operation of the Cable Television System within City or Company's provision within City of Cable Services.

1.10.1 Gross Revenues shall include without limitation all subscriber and customer revenues earned or accrued net of bad debts, including revenues for basic cable services; additional tiers; premium services; pay per view; program guides; installation disconnection or service call fees; fees for the provision, sale, rental, or lease of converters, remote controls, additional outlets and other customer premises equipment, revenues from the use of leased access channels, and advertising revenues from the System.

1.10.2 Advertising revenues and other revenues whose source cannot be identified with a specific subscriber shall be allocated to the City of Niles based upon the percentage of subscribers in City compared to that served from the head-end serving City.

1.11 PEG Channels shall have the meaning set forth in Part 5.

1.12 Public Ways shall mean all dedicated public rights-of-way, streets, highways, and alleys. "Public Ways" shall not include property of City which is not a dedicated public right-of-way, street, highway, or alley.

1.13 System shall have the same meaning as Cable Television System.

1.14 Uncured Event of Default shall have the meaning defined Part 11.

2 GRANT OF RIGHTS

2.1 Permission/Franchise. Subject to all the terms and conditions contained in this Franchise, the City Charter and City ordinances as from time to time in effect, City

hereby grants Company permission to erect, construct, install, and maintain a Cable Television System in the Authorized Area and to transact a Cable Television Business in such area.

2.1.1 This Franchise does not include leasing or subleasing wires, poles, conduits or space or spectrum on or in same or allowing wires or other facilities which are not part of the Cable Television System as defined in Section 1.5 above to be overlashed, affixed or attached to any portion of the Cable Television System. The preceding sentence shall not apply to the use of channel capacity by third parties under Section 612 of the Cable Act Communications Policy Act of 1984, as amended (47 U.S.C. § 532).

2.2 Nonexclusive. This Franchise and all rights granted thereunder are nonexclusive. City reserves the right to grant such other and future franchises as it deems appropriate. This Franchise does not establish any priority for the use of the public rights of way by Company or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the public rights of way the first priority shall be to the public generally, the second priority to City in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as determined by City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

2.2.1 If during the term of this Franchise City grants a franchise or other permission ("other franchise") to any other person or entity allowing them to provide Cable Services to a substantial portion of the residents of City, then Company shall have the option on 30 days written notice to City to adopt and comply with the all the terms of such other franchise, except those terms of such other franchise corresponding to Part 8, Part 9 and Part 14 of this Franchise, which three parts alone of this Franchise shall continue to be binding on Company and City.

2.3 Universal Service. Company shall provide Cable Services to any and all persons requesting same at any location within the Authorized Area. No line extension charge shall be imposed for the extension of service for 200 feet or less or where the extension of the Cable Television System passes 7 occupied dwelling units per 1,320 feet of distribution or trunk cable (excluding drops to the dwelling unit).

2.4 Channels; Programming. Company shall continue to provide a minimum of 33 channels to subscribers in the City. Company shall continue to provide to subscribers in the City the following categories of programming: sports, news, entertainment, music, religion, health/lifestyle, cultural/arts, children's, minority, family, weather, and distant television broadcast.

2.5 Emergencies. City may remove or damage the Cable Television System in the case of fire, disaster, or other emergencies threatening life or property, as determined by the

Mayor, City Manager, Fire Chief, or Police Chief. In such event neither the City nor any agent, contractor or employee thereof shall be liable to the Company for any damages caused to the Company or the Cable Television System, such as for, or in connection with, protecting, breaking through, moving, removal, altering, tearing down, or relocating any part of the Cable Television System.

2.6 Alert System. The Cable Television System shall maintain an emergency alert system as prescribed by the F.C.C. and the Cable Act of 1992. City and Company will agree on the procedures for City to follow to expeditiously use such facility in the event of an emergency.

2.7 Compliance with Applicable Law. In constructing maintaining and operating the Cable Television System, Company will act in a good and workmanlike manner, observing high standards of engineering and workmanship and using materials of good and durable quality. Company shall comply in all respects with the National Electrical Safety Code (latest edition) and National Electric Code (latest edition); all standards, practices, procedures and the like of the National Cable Television Association; the requirements of other utilities whose poles and conduits it uses, and all applicable federal, state, and local laws.

2.8 Poles. Company shall enter into a separate pole attachment agreement with the City for use of the City's utility poles. The City shall have the right to use the poles of Company on the same terms as the City charges Company.

2.9 Maintenance and Repair. Company will keep and maintain a proper and adequate inventory of maintenance and repair parts for the Cable Television System and a workforce of skilled technicians for its repair and maintenance.

2.10 Other Permits. This Franchise does not relieve Company of the obligation to obtain permits licenses and other approvals from City necessary for the construction repair or maintenance of the Cable Television System or provision of Cable Services or compliance with City ordinances such as compliance with right-of-way permits, building permits and the like.

2.11 Rebuild: At the time of the adoption and acceptance of this franchise, Company is in the process of rebuilding and upgrading the Cable Television System to a 550 megahertz standard. Such rebuild has been underway since mid-1993. Company will complete the rebuild in all areas of the City by July 31, 1995. If the preceding sentence is not complied with, the Company shall pay City \$100 per day until the sentence is satisfied, such sum being reasonable liquidated damages for the harm caused City and its residents.

2.11.1 After December 31, 1997 all activated channels will provide audio signals in stereo where the programming received by Company has stereo audio. Before such date, if Company does not provide audio signals in stereo on all

activated channels where programming is received in stereo, then for each new channel added to the system or activated Company shall make audio signals in stereo available on an additional channel, such channel to be selected by Company where the stereo signal processing equipment would be most useful.

3 PUBLIC WAYS

3.1 Use of Public Ways. Subject to the terms set forth herein Company is granted the right and the obligation during the term of this Franchise to erect, construct, install and maintain its Cable Television System in, over, under, along and across the Public Ways.

3.2 No Burden on Public Ways. Company shall not erect, install, construct, repair, replace or maintain its Cable Television System in such a fashion as to unduly burden the present or future use of the Public Ways. If City in its reasonable judgment determines that any portion of the Cable Television System is an undue burden, Company at its expense shall modify its system or take such other actions as City may determine are in the public interest to remove or alleviate the burden, and Company shall do so within the time period established by City.

3.3 Minimum Interference. The Cable Television System shall be erected and maintained by Company so as to cause the minimum interference with the use of the Public Ways and with the rights or reasonable convenience of property owners who adjoin any of the Public Ways.

3.4 Restoration of Property. Company shall immediately restore at its sole cost and expense, in a manner approved by City, any portion of the Public Ways that is in any way disturbed by the construction, operation, maintenance or removal of the Cable Television System to (at Company's option) as good or better condition than that which existed prior to the disturbance, and shall at its sole cost and expense immediately restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of Company or by its acts or omissions, to as good or better condition as such property was in immediately prior to the disturbance, damage or injury. Such a restoration shall start promptly but no more than 15 days from Company becoming aware of the problem in question.

3.5 Tree Trimming. Company may trim trees upon and overhanging the Public Ways so as to prevent the branches of such trees from coming into contact with the Cable Television System. No trimming shall be performed in the Public Ways without previously informing City. All trimming of trees, except in an emergency, on public property shall have the approval of City and except in an emergency all trimming of trees on private property shall require the consent of the property owner.

3.6 Relocation of Facilities. Company shall at its own cost and expense, protect, support, disconnect or remove from the Public Ways any portion of the Cable Television

System when required to do so by City due to street or other public excavation, construction, repair, grading, regrading, traffic conditions; the installation of sewers, drains, water pipes, or municipally-owned facilities of any kind; or the vacation, construction or relocation of streets or any other type of structure or improvement of a public agency or any other type of improvement necessary for the public health, safety or welfare.

3.7 Joint Use. Company shall permit the joint use of its poles, conduits and facilities located in the Public Ways by utilities and by the City or other governmental entities to the extent reasonably practicable and upon payment of a reasonable fee.

3.8 Private Property. Company shall be subject to all laws, ordinances or regulations regarding private property in the course of constructing, installing, operating or maintaining the Cable Television System in City. Company shall comply with all zoning and land use restrictions as may exist or may hereafter be amended.

3.9 Underground Facilities. If City in the future may require that, in a specific area of City, public utilities shall place their cables, wires, or other equipment underground then Company also shall place its existing and its future cables, wires, or other equipment underground within a reasonable period of time, not to exceed six months, of notification by City without expense or liability therefor to City.

3.10 Temporary Relocation. Upon 15 business days notice Company shall temporarily raise or lower its wires or other equipment upon the request of any person including without limitation, a person holding a building moving permit issued by City. Company may charge a reasonable rate for this service not to exceed its actual direct costs.

3.11 Vacation. If a Public Way is vacated eliminated discontinued or closed, all rights of Company under this Franchise to use same shall terminate and Company at its expense shall immediately remove the Cable Television System from such Public Way.

3.12 Discontinuance and Removal of the Cable Television System. Upon the revocation termination or expiration of this Agreement, unless an extension is granted, Company shall immediately (subject to the notice provision of Section 7.2) discontinue the provision of Cable Services and all rights of Company to use the Public Ways shall cease. Company, at the direction of City, shall remove its Cable Television System, including all supporting structures, poles, transmission and distribution system and other appurtenances fixtures or property from the Public Ways, in, over, under, along, or through which they are installed within six (6) months of the revocation, termination, or expiration. Company shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its Cable Television System, including any improvements made to such property subsequent to the construction of its Cable Television System. Restoration of City property including but not limited to the Public Ways shall be in accordance with the directions and specifications of City, and all applicable laws, ordinances and regulations, at Company's sole expense. If such removal and restoration is

not completed within six (6) months after the revocation, termination, or expiration, all of Company's property remaining in the affected Public Ways shall, at the option of City, be deemed abandoned and shall, at the option of City, become its property or City may obtain a court order compelling Company to remove same. In the event Company fails or refuses to remove its Cable Television System or to satisfactorily restore all areas to the condition in which they existed prior to the original construction of the Cable Television System City, at its option, may perform such work and collect the costs thereof from Company. No surety on any performance bond nor any letter of credit shall be discharged until City has certified to Company in writing that the Cable Television System has been dismantled, removed, and all other property restored, to the satisfaction of City.

4 SERVICE

4.1 Negative Options. Company will not engage in the practice of "negative option" marketing and will not charge a subscriber for any optional, a la carte or premium service or equipment which the subscriber has not affirmatively requested.

4.2 Customer Standards. Company will comply with the more stringent of the customer service and consumer protection provisions of this Franchise; those from time to time adopted by the Company; those from time to time adopted by the FCC; or the service and consumer protection standards from time to time adopted by the National Cable Television Association.

4.2.1 "Normal Business Hours" for the purpose of such FCC customer service rules as in effect on the effective date of this Franchise shall mean 9 AM to 5 PM, Monday through Friday and two evenings per week until 7 PM, and 9 to noon on Saturday, excluding holidays, or such other hours as City and Company shall from time to time agree.

4.3 Reservation. City reserves the right by ordinance to alter or amend the customer service and consumer protection matters set forth in this Part, including adopting ordinances stricter than or covering items not presently set forth in this Part. City agrees to meet with Company on the matters in question prior to taking such action, and to provide Company with at least two months notice of such action.

4.4 Free Service. Company will provide without any installation charge or monthly charge one free outlet at City Hall, at the Utilities Building, at Police/Fire Headquarters and at the Senior Citizen Center and in each existing public and parochial school or college. If requested, Company will add additional outlets at the preceding facilities (such as to some or all classrooms and auditoriums, but not to dormitories) and will do so at its hourly service charge and City and the schools will not add additional outlets themselves and such outlets shall be used only for cable TV purposes. None of the preceding shall be charged any fee

during the term of this Franchise for those channels comprising basic service or any expanded basic service and such channels may not be resold.

4.4.1 For the preceding facilities, if the drop to the facility is more than 150 feet the owner of the facility will be charged only the incremental cost for drops or line extensions beyond 150 feet. Drops or installations of less than 150 feet shall be free.

4.5 Access to Service. Company shall not deny service, deny access, or otherwise discriminate on the availability or rates, terms or conditions of Cable Services provided to subscribers on the basis of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status, location within City, or status with regard to public assistance. Company shall comply at all times with all applicable federal, state and local laws and regulations relating to nondiscrimination. Company shall not deny or discriminate against any group of actual or potential subscribers in City on access to or the rates, terms and conditions of Cable Services because of the income level or other demographics of the local area in which such group may be located.

4.6 Programming/Lockout. Company shall provide all subscribers with the option of obtaining a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by the subscriber.

4.7 Pay Per View. Subscribers shall be given the option of not having pay per view or per program service available at all.

4.8 Blocking. Upon request by a subscriber, for a fee Company shall use a notch filter or equivalent to block such subscriber from receiving the video or both the audio and video portion (even though this may create problems on adjacent channels) of a channel on which programming is provided on a per program or pay per view basis.

4.9 Notification. Company will provide written information on at least each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request.

4.9.1 Products and services offered.

4.9.2 Prices (rates) and options for Cable Services and conditions of subscription to Cable Service. Prices shall include those for programming, equipment rental, program guides, installation, disconnection, late fees and other fees charged by Company.

4.9.3 Installation and service maintenance policies.

4.9.4 Instruction on how to use the Cable Service including procedures and options for pay per view and premium channels.

4.9.5 Channel positions of programming carried on the Cable Television System.

4.9.6 Billing and complaint procedures, including the address and phone number of the person or position at the City responsible for cable matters.

4.9.7 Applicable privacy requirements as set forth in this Franchise or otherwise provided for by law.

4.10 **Seasonal Contracts.** For Subscribers desiring only seasonal service, Company shall either offer seasonal service at a reduction from its standard rates or shall offer a reduced prescheduled seasonal installation and disconnection charge.

4.11 **Office/Phone.** Company shall maintain an office to serve the purpose of paying bills; receiving and responding to requests for service; receiving and resolving customer complaints regarding Cable Service, equipment malfunctions, billing and collection disputes; and similar matters. Such office shall be 1930 Niles-Buchanan Road or such other locations as City and Company shall from time to time agree. Company shall have a local telephone number and toll-free telephone number for use by subscribers toll-free 24 hours per day, 7 days per week. The local office of the Company shall be open to receive inquiries or complaints in person or by telephone during normal business hours Monday through Friday including the noon lunch hour, excluding legal holidays observed by the Company.

4.11.1 Company shall provide reports to City quarterly (monthly if City shall request same) showing on a consistent basis, fairly applied, the number of telephone calls received by Company and in addition measuring Company's compliance with the standards of FCC Rule 76.309(c)(2)(i),(ii), (iii), and (iv) (a copy of the Rule is attached). Such report shall show Company's performance excluding periods of abnormal operating conditions, and if Company contends any such conditions occurred during the period in question, it shall also describe the nature and extent of such conditions and show Company's performance including the time periods such conditions were in effect.

4.12 **Continuity of Service.** Company shall interrupt service only with good cause and for the shortest time possible except in emergency situations and as required by the FCC. Services may be interrupted between 1:00 a.m. and 5:00 a.m. for routine testing, maintenance and repair, without notification. In the event of a System Upgrade, Company shall both minimize any interruptions in service caused by the upgrade, and shall meet with City in advance to advise City of the nature, geographic extent and duration of any

interruptions and obtain and where possible respond to City's comments on same. Any test required by the F.C.C. will not require prior notice.

4.13 Log of Complaints. Company shall maintain a written log of all subscriber complaints or an equivalent stored in computer memory and capable of access and reproduction in printed form of all subscriber complaints. Such log shall list the date and time of such complaints, identifying the subscribers and describing the nature of the complaints and when and what actions were taken by Company in response thereto. Such log shall be kept at Company's local office reflecting the operations to date for a period of at least three (3) years, and shall be available for City's inspection during regular business hours.

4.14 Service Call Charges. Unless otherwise provided by the FCC, no charge shall be made to the subscriber for any service call unless the problem giving rise to the service request can be demonstrated by Company to have been:

4.14.1 Caused by subscriber negligence, or

4.14.2 Caused by malicious destruction of cable equipment, or

4.14.3 A problem previously established as having been non-cable in origin.

4.15 Identification. All service personnel of Company or its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. Company shall account for all identification cards at all times. Every service vehicle of Company shall be clearly identifiable by the public.

4.16 Disconnection. Company may only disconnect a subscriber if at least 45 days have elapsed after the due date for payment of the subscriber's bill and Company has provided at least 10 days written notice (such as in a bill) to the subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection; provided, however, notwithstanding the foregoing Company may disconnect a subscriber at any time if Company in good faith and on reasonable grounds determines that the subscriber has tampered with or abused Company's equipment; or is or may be engaged in the theft of Cable Services; or that the subscriber premises wiring violates applicable FCC standards. Company may not disconnect a subscriber for failure to pay amounts due to a dispute as to the correct amount of the subscriber's bill.

4.16.1 Company shall promptly disconnect any subscriber who so requests disconnection. No period of notice prior to requested termination of service may be required to subscribers by Company. No charge may be imposed upon the subscriber for any cable service delivered after the effective date of the disconnect